

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MILTON BRIGGS and DEPARTMENT OF THE AIR FORCE, AIR FORCE
SPACE COMMAND, F.E. WARREN AIR FORCE BASE, WY

*Docket No. 02-139; Submitted on the Record;
Issued July 23, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has more than an eight percent monaural hearing loss for which he received a schedule award.

On December 16, 1999 appellant, then a 65-year-old integrated electronic systems mechanic, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that he sustained a hearing loss in the course of his federal employment. Appellant stated that he first became aware of his illness in June 1996. On the reverse of the form, the employing establishment indicated that appellant had retired on November 30, 1999. Medical and factual records provided by the employing establishment included test results from periodic audiograms performed by the employing establishment between June 14, 1991 and November 29, 1999, and documents indicating that appellant was exposed to loud noise at work.

By letter dated April 25, 2001, the Office of Workers' Compensation Programs referred appellant to Dr. Michael R. Menachof, a Board-certified otolaryngologist, for otologic evaluation and audiometric testing.

Dr. Menachof examined appellant on May 7, 2001 and audiometric testing on the doctor's behalf was performed on that day. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear: 25, 15, 35 and 45 decibels; left ear: 10, 15, 10 and 25 decibels. The audiogram results noted a calibration date of July 11, 2000.

In the May 15, 2001 report, Dr. Menachof noted examination findings and diagnosed significant right-sided sensorineural high frequency hearing loss. Additionally, the left ear appeared to be essentially within normal limits. He further opined that appellant's high frequency hearing loss was consistent with his history of noise exposure and his working environment. Dr. Menachof recommended the use of an amplification device for the right ear.

The Office accepted the claim for binaural hearing loss. Appellant thereafter filed a claim for a schedule award.

On May 30, 2001 an Office medical adviser reviewed the medical evidence of record and calculated an eight percent monaural hearing loss of the right ear. The Office also authorized aural rehabilitation for the right ear.

By award of compensation dated August 15, 2001, the Office granted appellant a schedule award for an 8 percent monaural loss of hearing, for 4.16 weeks of compensation between May 30 and June 28, 2001.

The Board finds that appellant sustained no more than an eight percent monaural hearing loss of the right ear for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act¹ and the implementing federal regulation² set forth the number of weeks of compensation to be paid for permanent loss of the members, functions and organs of the body listed in the schedule.³ However, neither the Act nor the regulations specify the manner in which the percentage loss of a member, function or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.⁴ However, as a matter of administrative practice, the Board has stated: "For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants."⁵

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second.⁶ The losses at each frequency are added and averaged. A "fence" of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday sounds under everyday listening conditions. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss. The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss. The lesser loss is multiplied by five, then added to each ear using the formula for monaural loss. The lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107.

⁴ See *Donald A. Larson*, 41 ECAB 947 (1990); *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁵ *Danniel C. Goings*, *supra* note 4.

⁶ A.M.A., *Guides* at 224, 225 (4th ed. 1993).

loss.⁷ The Board has concurred in the Office's use of this standard for evaluating hearing losses for schedule award purposes.⁸

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Menachof's May 15, 2001 report and the accompanying audiometric valuation that Dr. Menachof reviewed. The Office medical adviser reviewed Dr. Menachof's report and audiogram performed on his behalf, and properly applied the Office's standardized procedures to the audiogram as follows: the decibel losses for the right ear at 500, 1,000, 2,000 and 3,000 cycles per second at frequencies 25, 15, 35 and 45 respectively were totaled at 120 and divided by 4 to obtain the average hearing loss at those frequencies of 30. The average of 30 was reduced by the "fence" of 25 to obtain the average hearing loss at those frequencies at 5, which when multiplied by the established factor of 1.5 computed a 7.5 percent monaural loss of hearing for the right ear, which is rounded up to an 8 percent loss. The decibel loss for the left ear at 500, 1,000, 2,000 and 3,000 cycles per second frequencies, 10, 15, 10 and 25 respectively were totaled at 60 and divided by 4 to obtain the average hearing loss at those frequencies of 15, which was reduced to 0 when the "fence" of 25 decibels was subtracted.

The Board finds that the report and audiogram performed on behalf of Dr. Menachof constitutes the most complete evaluation of record and establish that appellant has no more than an eight percent monaural loss of hearing for which he received a schedule award.

The Act's compensation schedule specifies a maximum of 52 weeks of compensation payable for the total loss of hearing in 1 ear,⁹ and the schedule compensates partial loss of hearing at a proportionate rate.¹⁰ Therefore, compensation for an 8 percent monaural loss of hearing is 8 percent of 52 weeks, which the Office awarded to appellant in its August 15, 2001 schedule award decision. Accordingly, the Board finds that the Office properly followed its standardized procedures in evaluating appellant's permanent loss of hearing at 8 percent in the right ear and that the Office correctly applied schedule compensation provisions in awarding appellant a total of 4.16 weeks of compensation.

⁷ See *Danniel C. Goings*, *supra* note 4.

⁸ *Id.*

⁹ 5 U.S.C. § 8107(c)(13)(A).

¹⁰ *Id.* at § 8107(c)(19).

The decision of the Office of Workers' Compensation Programs dated August 15, 2001 is hereby affirmed.

Dated, Washington, DC
July 23, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member